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Filing date: **07/21/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061663
Party	Defendant Bean Logik LLC aka Body Brew
Correspondence Address	BEAN LOGIK LLC 9405 NE 56TH AVE VANCOUVER, WA 98665 UNITED STATES bob@bodybrew.com
Submission	Answer
Filer's Name	Leigh F. Gill
Filer's e-mail	leigh.gill@immixlaw.com
Signature	s/ Leigh F. Gill/
Date	07/21/2015
Attachments	ANSWER - Petition for Cancellation - 20150721_Final.pdf(85409 bytes ) Answer - Exhibit 1.pdf(5216 bytes ) Answer - Exhibit 2-1.pdf(968500 bytes ) Certificate of Service_Answer.pdf(71312 bytes )

Cancellation No. 92061663

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In Re U.S. Registration 3,700,054**

Klean Kanteen, Inc.,	)	
	)	
Petitioner,	)	Cancellation No. 92061663
	)	
Vs.	)	
	)	
Bean Logik LLC	)	
	)	
Registrant	)	
	)	
	)	
	)	

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**ANSWER TO PETITION FOR CANCELLATION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir or Madam,

In answer to Klean Kanteen, Inc.'s petition for cancellation, filed on June 10, 2015, Bean Logik LLC responds as follows to the allegations as numbered in the petition:

1. Registrant admits these facts.
2. Registrant admits these facts.
3. Registrant admits that the spelling of "Kanteen" with the letter "K" is distinctive as to both registrant and petitioner. Registrant lacks information sufficient to form an opinion as to the balance of the statement, and therefore denies.
4. Registrant admits these facts.

5. Registrant lacks information sufficient to form an opinion and therefore denies.
6. Registrant admits these facts.
7. Registrant lacks information sufficient to form an opinion and therefore denies.

#### **Cancellation Ground 1**

8. Registrant reiterates its responses to 1 through 7 above.
9. Registrant admits these facts.
10. Registrant admits these facts.
11. Registrant admits to using BEAN KANTEEN for Registrant's products, and that Registrant's products include the Hourglass coffee brewing system. Registrant admits that in 2015 it announced the BOD coffee brewing system, which includes the integrated Bean Kanteen and comes with the Baby Bean Kanteen and Mini Bean Kanteen. The balance of the statement is denied.
12. Registrant admits that the BOD coffee brewing system is currently available for pre-order via Indiegogo, and that the BOD coffee brewing system includes an integrated Bean Kanteen. The balance of the statement is denied.
13. Registrant denies these facts.
14. Registrant denies these facts.
15. Registrant denies these facts.
16. Registrant denies these facts.
17. Registrant admits that the specimen, showing the pre-order campaign, submitted to the USPTO accompanying Registrant's Section 8 affidavit was not accepted. Registrant denies that this is evidence of failure to use BEAN KANTEEN. The balance of the statement, to the extent it contains additional assertions, is denied.

18. Registrant denies these facts.

19. Registrant denies these facts.

20. Registrant denies these facts.

### **Cancellation Ground 2**

21. Registrant reiterates its responses to 1 through 20 above.

22. Registrant admits that the specimen submitted with Registrant's section 8 declaration on May 8, 2015 was rejected. Registrant denies that Bean Logik has not used the mark and the balance of the facts asserted are denied.

23. Registrant denies these facts.

24. Registrant denies these facts.

### **Cancellation Ground 3**

25. Registrant reiterates its responses to 1 through 24 above.

26. Registrant admits that Petitioner's registered trademark 3,141,907 claims an earlier use date than Registrant's registered trademark 3,700,754, and that Petitioner's use of the mark for stainless steel water bottles creates a perception of the KLEAN KANTEEN mark as an indication of source. The balance of the facts asserted are denied.

27. Registrant admits that the use of the KLEAN KANTEEN mark for stainless steel water bottles was earlier than Registrant's first use in commerce of BEAN KANTEEN; however the goods for which Registrant and Petitioner initially used their respective marks were different and travelled in different streams of commerce.

28. Registrant admits this fact.

29. Registrant denies these facts.

30. Registrant denies these facts.

31. Registrant's claimed use and the registered trademark speak for themselves. Admitted that Registrant's products include the Mini Bean Kanteen and the Baby Bean Kanteen, each of which is designed to store coffee in a portable bottle with a cap; denied that Registrant's Bean Kanteens for use with coffee as part of a coffee making system are "very close" to Petitioner's "Reusable stainless steel water bottles." The balance of the facts asserted are denied.

32. Registrant denies these facts.

33. Registrant denies these facts.

#### **Cancellation Ground 4**

34. Registrant reiterates its responses to 1 through 33 above.

35. Registrant denies these facts.

36. Admitted that the Kanteen portion and rhyming initial portion of Registrant and Petitioner's respective marks are similar; denied that these similarities create a mistaken impression of relationship in the source of goods as Registrant's use has been exclusively in relation to coffee-beverage containers and coffee makers, as recited in Registrant's registered trademark, and "Kanteen" conveys the function of the respective goods. The balance of the facts asserted are denied.

37. Registrant denies these facts.

38. Registrant admits that Petitioner is not connected with the activities performed by Registrant under the BEAN KANTEEN mark.

39. Registrant denies these facts.

40. Registrant denies these facts.

#### **Cancellation Ground 5**

41. Registrant reiterates its responses to 1 through 40 above.

42. Registrant denies this fact.
43. Registrant denies these facts.

### **AFFIRMATIVE DEFENSES**

44. Petitioner's petition to cancel is barred by laches or estoppel, or Petitioner has acquiesced to Registrant's use. Registrant's prior intent-to-use application for BEAN KANTEEN, application serial no. 78/609,008, was filed on April 14, 2005 and prior to Petitioner's first application for KLEAN KANTEEN which resulted in registration 3,141,907, filed October 10, 2005. The prosecution history of that registered mark reveals an Examiner's Amendment dated April 14, 2006 which declared "no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d)." *See* Exhibit 1. Petitioner subsequently filed two additional applications, 77/598,520 (Klean Kanteen logo) and 77/641,581 (KID KANTEEN), and a reasonably diligent party would have found Bean Kanteen's prior application and would have petitioned to cancel. *See* Exhibit 2. Thereafter, no opposition was raised when Registrant's applied-for mark was published January 13, 2009. No petition to cancel was filed 2009, when the registration of BEAN KANTEEN occurred, nor in the subsequent five years.

45. Petitioner's registrations should be amended as necessary to disclaim the descriptive "Kanteen," an obvious misspelling of "Canteen." Petitioner's, as well as Registrant's, registrations include a disclaimer: "NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CANTEEN" APART FROM THE MARK AS SHOWN." Both Registrant's mark and Petitioner's marks are used with goods that store and transport beverages, and "Canteen" is descriptive of such use.

WHEREFORE, Registrant denies that Petitioner has sufficient grounds to support cancellation of United States Registration No. 3,700,054.

Dated: July 21, 2015

By: /s/ Leigh F. Gill  
Leigh F. Gill  
Immix Law Group  
121 SW Salmon St. Suite 1000  
Portland, OR, 97201

Counsel for Registrant

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 78/730304

**APPLICANT:** Cressline Dist. Co.

**\*78730304\***

**CORRESPONDENT ADDRESS:**

CRESSLINE DIST. CO.  
4345 HEDSTROM WAY  
CHICO, CA 95973-9401

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

**MARK:** KLEAN KANTEEN

**CORRESPONDENT'S REFERENCE/DOCKET NO :** N/A

**CORRESPONDENT EMAIL ADDRESS:**

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and email address.

Serial Number 78/730304

## EXAMINER'S AMENDMENT

**OFFICE RECORDS SEARCH:** The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

**ADVISORY – AMENDMENTS TO GOODS/SERVICES:** If the identification of goods and/or services has been amended below, any future amendments must be in accordance with 37 C.F.R. §2.71(a) and TMEP §1402.07(e).

**AMENDMENT(S) AUTHORIZED:** As authorized by Darrel Cresswell on April 14, 2006, the application is amended as noted below. *If applicant disagrees with or objects to any of the amendments below, please notify the undersigned trademark examining attorney immediately.* Otherwise, no response is necessary. TMEP §707.

### Identification of Goods

The identification of goods is amended to read as follows: "Reusable stainless steel water bottles sold



empty that do not leak toxins into their contents”, in International Class 21. TMEP §1402.01(e).

**Disclaimer**

The following disclaimer statement is added to the record:

No claim is made to the exclusive right to use “CANTEEN” apart from the mark as shown.

15 U.S.C. §1056; TMEP §§1213, 1213.03(a) and 1213.08(a)(i).

**Miscellaneous**

If applicant has questions about its application or needs further assistance, please telephone the assigned trademark examining attorney directly at the number below.

/David Yontef/  
Trademark Attorney Advisor  
Law Office 105  
(571) 272-8274

**Int. Cl.: 21**

**Prior U.S. Cls.: 2, 13, 23, 29, 30, 33, 40 and 50**

**Reg. No. 3,642,676**

**United States Patent and Trademark Office**

**Registered June 23, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**



CRESSLINE DISTRIBUTING, INCORPORATED  
(CALIFORNIA CORPORATION), DBA KLEAN  
KANTEEN  
4345 HEDSTROM WAY  
CHICO, CA 95973

FOR: REUSABLE STAINLESS STEEL WATER  
BOTTLES SOLD EMPTY, IN CLASS 21 (U.S. CLS. 2,  
13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 12-1-2007; IN COMMERCE 12-1-2007.

OWNER OF U.S. REG. NO. 3,141,907.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "CANTEEN", APART FROM THE  
MARK AS SHOWN.

THE COLOR(S) BLACK AND GREEN IS/ARE  
CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDS "KLEAN  
KANTEEN" IN STYLIZED BLACK PRINT, WITH  
THE WORD "KLEAN" STACKED OVER THE  
WORD "KANTEEN" WITH A STYLIZED EARTH  
IN GREEN NEXT TO THE WORD "KLEAN".

SER. NO. 77-598,520, FILED 10-22-2008.

JACLYN KIDWELL, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

## Kid Kanteen

**Reg. No. 3,710,695** CRESSLINE DISTRIBUTING, INCORPORATED (CALIFORNIA CORPORATION), DBA  
Registered Nov. 10, 2009 KLEAN KANTEEN,  
4345 HEDSTROM WAY  
CHICO, CA 95973

**Int. Cl.: 21**

**TRADEMARK  
SUPPLEMENTAL REGISTER**

FOR: STAINLESS STEEL BEVERAGE BOTTLES SOLD EMPTY AND SIZED SPECIFICALLY  
FOR CHILDREN WHICH DO NOT LEACH TOXINS INTO THEIR CONTENTS, IN CLASS  
21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 4-10-2009; IN COMMERCE 4-10-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,141,907.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CANTEEN", APART FROM  
THE MARK AS SHOWN.

SER. NO. 77-641,581, FILED P.R. 12-30-2008; AM. S.R. 9-17-2009.

SKYE YOUNG, EXAMINING ATTORNEY



*David J. Kyfos*

Director of the United States Patent and Trademark Office

Cancellation No. 92061663

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Vs.	)	
	)	
Bean Logik LLC	)	
	)	
Registrant	)	
	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Answer to the Petition to Cancel was served by email and U.S. First Class Mail upon Klean Kanteen, Inc. at the correspondence address of record below on this 21st day of July, 2015:

KLEAN KANTEEN, INC.

Christopher S Tuttle  
ALLEMAN HALL MCCOY RUSSELL & TUTTLE LLP  
806 SW BROADWAY, SUITE 600  
PORTLAND, OR 97204  
UNITED STATES  
tuttle@ahmrt.com, harnett@ahmrt.com, mercer@ahmrt.com, saing@ahmrt.com,  
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Phone: 503-459-4141

/s/ Leigh F. Gill  
Leigh F. Gill  
Immix Law Group P.C.  
Attorneys for Registrant